FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application NO. 7102 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 25th April, 2007.

By this Civil application, the applicant seeks condonation of delay of 779 days in filing the first appeal. The impugned judgment was passed by the trial Court on 03.05.2003. The appellant/applicant had applied for grant of certified copy of the judgment on 06.06.2003. On 21.07.2003, the appeal was filed before the District Judge on a belief that the appeal against the order passed by the trial Court would lie before the District Judge.

It is the case of the appellant that the matter pended before the District Judge for about two years and by an order dated

25.07.2005, the District Judge returned the matter to the appellant for presentation of the same before appropriate forum. According to the District Judge, the District Judge had no jurisdiction to entertain the civil appeal against the judgment dated 03.05.2003. The memorandum of appeal was received by the applicant on 21.07.2005. It is stated in this Civil Application that since the memorandum of appeal was prepared for the purpose of filing it before the District Judge, some necessary amendments/corrections were required in the memorandum, and therefore, the applicant sent the memorandum to the concerned counsel for preparation of memorandum of the First Appeal by making the necessary corrections. The matter went to the filing section of the N.I.T. On 01.09.2005. The matter was thereafter sent to the other sections for

drawing of the Court fees and on 08.09.2005, Shri Dubey, the presenting Officer for the applicant, tried to file the matter before this Court. The First Appeal, however, could not be filed before this Court on 08.09.2005 as certain necessary documents and the certified copies had not accompanied the memorandum of appeal. It is stated in the application and the affidavits filed by the presenting officer Shri Dubey and the Officer of the N.I.T. that the legal section of the applicant believed that the first appeal was actually filed by Shri Dubey on 08.09.2005. In the meanwhile, Shri Dubey had left the job of the N.I.T. It is the case of the applicant and it is also stated in the affidavit of Shri Dubey that he had not informed the N.I.T. about the non filing of the appeal on 08.09.2005. Certain other facts are tried to be brought in the affidavit to show that there were

some disturbances in the family life of Shri Dubey. It is not necessary to deal with those aspects for deciding this Civil Application.

Suffice it to say that Shri Dubey could not file the first appeal before this Court on 08.09.2005 because of some objections and ultimately the appeal came to be filed before this Court on 19.10.2005. After exclusion of the time spent by the applicant in prosecuting the appeal before the wrong forum i.e. the District Judge from 21.07.2003 to 25.07.2005, it is pointed on behalf of the applicant that the delay caused in filing the first appeal before this Court was only 36 days. The rest of the delay occurred due to the bona fide prosecution of the matter before the District Judge. It was stated in the application and it was also submitted on behalf of the applicant that the delay caused in filing the appeal was not

intentional and it is necessary in the interest of justice to condone the delay.

The prayer made in this Civil Application was vehemently opposed on behalf of the respondents by the learned counsel. According to the learned counsel for the respondent, the appellant should have immediately filed the appeal after the memorandum of first appeal was returned by the District Judge to the applicant on 28.07.2005. According to the respondents, the delay in filing the appeal was not sufficiently explained either in the application or the affidavits filed by the presenting officers. It was further submitted on behalf of the respondents that the appellant is a public body and it had various sections and good legal advisers, and therefore, in view of the aforesaid facts, the appeal could have been very well

filed within a prescribed period of limitation. It was then canvassed on behalf of respondents that if Shri Dubey was not in a position to file the appeal on 08.09.2005 or at a further point of time due to his personal difficulties, the same could have filed by some other official of the N.I.T. The counsel for the respondents relied on the judgments reported in ***AIR 1998 SC 2276***, ***1998(1) Mh.L.J. 745***, ***2001(2) MP.L.J. 567***, ***2007(1) Mh.L.J. 807*** and ***AIR 1995 Gujrat 29*** to substantiate the aforesaid submissions. According to the counsel for the respondents, the application filed by the applicant is liable to be dismissed.

I have minutely perused the contents of the application, the reply filed by the respondents thereto, affidavits filed by the presenting officers as also the decisions reported in five cases which are relied on by

the respondents. On a perusal of the application and the affidavits, it is apparent that the applicant was bona fide prosecuting the matter before the District Judge from 21.07.2003 to 25.07.2005. It is not disputed by the respondents that the memorandum of appeal was received back from the District Judge on 28.07.2005. It was thereafter, as stated in the application and in the affidavits, the matter was sent to the counsel of the appellant and the case papers travelled from the legal section of the N.I.T. to the sections where it was necessary to draw the Court fees. Ultimately, as stated in the affidavit filed by Shri Dubey, the matter was presented before this Court on 08.09.2005. But, the first appeal could not be filed because of some lacunae in the presentation of the same. Though Shri Dubey had tried to file the matter in this Court

on 08.09.2005, the matter could not be filed and it appears in the affidavit filed by Shri Dubey that inadvertently the matter was taken by Shri Dubey to his residence. The legal section of the N.I.T. believed that the matter was filed by Shri Dubey, and therefore, they were under the bona fide belief that the appeal is already filed. Later on, after getting knowledge about non filing of the appeal on 08.09.2005, the appeal was ultimately filed in this Court on 19.10.2005. As rightly pointed out on behalf of the applicant that after exclusion of the time spent by the applicant in bona fide prosecuting the matter before the District Judge from 21.07.2003 to 25.07.2005, the delay in filing the appeal was only 36 days. In the meanwhile, as it is stated in the application as also in the affidavits, Shri Dubey had left the job and inadvertently kept the

appeal memo at his residence for some time. In view of the aforesaid facts, it cannot be said that the applicant did not act diligently and was careless and negligent in filing the matter before this Court in time. The submission made on behalf of the respondents that if Shri Dubey was absent, somebody else could have filed the matter is also not acceptable as it is pointed out from the application as also the affidavit filed by Shri Dubey that he had taken the matter to his residence and this fact was not informed to the legal section of the N.I.T. who believed that the appeal was actually filed on 08.09.2005. It is no doubt true that the public body has various sections and there is also a section of legal advisers to take up the legal matters and further that no special privilege could be granted to a public body so far as the question of condonation of delay is concerned,

in the facts and circumstances of the case, it is necessary to condone the delay in filing the first appeal. The applicant has made out sufficient cause for condonation of the delay in filing the first appeal. Though various decisions are cited on behalf of the respondents to substantiate the submission that the application is liable to be dismissed, none of the decisions relied on by the respondents would apply in the facts of the case. Even otherwise, there cannot be a straight jacket formula for deciding an application for condonation of delay. Each case has to be considered on its own facts. In the instant case, the application as well as the affidavits make it amply clear that the applicant was not negligent in prosecuting the matter. Firstly the applicant was bona fide prosecuting the matter before the District Judge and secondly the officers of

the applicant were under the bona fide belief that the appeal is already filed on 08.09.2005. The reasons stated in the Civil Application and the affidavits filed by the presenting officers clearly show that there is sufficient cause for condonation of delay in filing the first appeal. The application is, therefore, allowed. The delay of 779 days in filing the appeal is condoned. However, in the facts and circumstances of the case, the appellant is directed to pay costs of Rs.3,000/- to the respondent within a period of four weeks from today.

The Civil Application is allowed and disposed on the aforesaid terms.

C.A. NO. 2922 OF 2007.

Shri Marpakwar, learned counsel for the respondent, submits that the respondents are not desirous of prosecuting this Civil

Application.

The Civil Application is, therefore, dismissed as not pressed.

C.A. NO. 522 OF 2007.

Notice to the respondents returnable in the Second week of June-2007.

Shri Marpakwar, learned counsel, waives notice on behalf of respondents nos.1 to 4.

Shri Agrawal, learned Assistant Government Pleader, waives notice on behalf of respondent no.5.

The parties are directed to maintain status quo in the meanwhile.

JUDGE

APTE